

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SHANE BUCZEK, shane-christopher: buczek,
third party intervenor as Grantor, Beneficiary of said
Cestui Qui Trust ,

Petitioner,

-v-

DECISION and ORDER
10-CV-382S

CONSTRUCTIVE STATUTORY TRUST,
UNITED STATES MARSHALS, UNITED STATES
PROBATION, and UNITED STATES OF AMERICA,

Respondents.

Petitioner, Shane Buczek, who is currently awaiting sentencing in this Court after a jury found him guilty of Bank Fraud (18 U.S.C. § 1344) and Commission of an Offense While on Release (18 U.S.C. § 3147), *United States v. Buczek*, 09-CR-0121S, has filed a Petition and Amended Petition for a Writ of Habeas Corpus, pursuant to 28 U.S.C. § 2241, challenging, *inter alia*, this Court's jurisdiction over the underlying criminal proceedings and the conditions of his release.¹ Petitioner has also filed a Motion for Judgment on the Pleadings (Docket No. 3), a Motion to Take Judicial Notice of the Determination by the DOJ that Title 18 (1948) is Unconstitutional and of the Fair Warning Doctrine (Docket No. 4), and Motion/Petition for a determination of a Question of Jurisdiction (Docket No. 5).

¹Buczek has filed two other similar petitions that involve the two other criminal proceedings pending against him, *United States of America v. Buczek*, 09-CR-0141S, and *United States of America v. Buczek*, 08-CR-0054S. Those two petitions will be addressed in separate orders. *Buczek v. Constructive Statutory Trust*, 10-CV-0383S and *Buczek v. Constructive Statutory Trust*, 10-CV-0384S.

IT HEREBY IS ORDERED as follows:

1. Respondents shall file an **answer** and **memorandum of law** with the Clerk of Court (and also serve a copy of each upon petitioner) no later than **November 15, 2010**. The answer shall respond to the allegations of the application and shall indicate whether petitioner has used any other available state or federal remedies including any administrative appeals, direct judicial appeals or prior post-conviction motions. Further, the answer shall indicate whether any evidentiary hearing was afforded petitioner in a state or federal court on either direct or collateral challenge to petitioner's custody. The memorandum of law shall address each of the issues raised in the petition and include citations of relevant supporting authority.

Petitioner shall have twenty (20) days upon receipt of the answer to file a written response to the answer and memorandum of law.

Within twenty (20) days of the date this order is filed with the Clerk of Court, respondent may file a motion for a more definite statement or a motion to dismiss the application, accompanied by appropriate exhibits which demonstrate that an answer to the application is unnecessary. The timely filing of such motion shall extend the time for filing an answer for fourteen (14) days, but the failure of the Court to act upon the motion within that time shall not further extend the time for filing an answer.

2. The Clerk of Court shall serve a copy of the petition and amended petition, together with a copy of this order, by certified mail, upon respondents and upon United States Attorney, Western District of New York, 138 Delaware Avenue, Buffalo, New York 14202.

**PETITIONER MUST FORWARD A COPY OF ALL FUTURE PAPERS AND
CORRESPONDENCE TO THE ATTORNEY APPEARING FOR THE RESPONDENT.**

SO ORDERED.

Dated: October 6, 2010
 Buffalo, New York

s/William M. Skretny
WILLIAM M. SKRETNY
Chief Judge
United States District Court